

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-OR-259
)	
Entergy Services, Inc.)	NAL/Acct. No.200332620002
Owner of Antenna Structure Number 1020649)	
Little Rock, Arkansas)	FRN 0001-7125-87
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 6, 2002

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Entergy Services, Inc. (“Entergy”), owner of antenna structure number 1020649, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(a) of the Commission's Rules (“Rules”).¹ Specifically, we find Entergy apparently liable for failing to exhibit the prescribed tower lighting on its antenna structure.

II. BACKGROUND

2. On August 28 and 29, 2002, agents from the FCC Enforcement Bureau’s New Orleans Office inspected the antenna structure associated with Antenna Structure Registration (“ASR”) number 1020649 in Labadieville, Louisiana. According to the Commission’s ASR database, structure number 1020649 is 77.7 meters tall (approximately 255 feet) and requires painting and lighting in accordance with paragraphs 1, 3, 11 and 21 of FCC Form 715/715A. At the times of inspection (7:55 PM on August 28, 2002 and 8:00 PM on August 29, 2002), the top red obstruction light was extinguished.²

3. In addition, the antenna structure owner is responsible for making daily observations of the structure's lights either visually or automatically.³ Furthermore, in the event of an extinguishment or improper functioning of any top steady burning or any flashing obstruction light, the structure owner is required to report the problem to the Federal Aviation Administration (“FAA”) within 30 minutes of this observation.⁴ However, when the Commission’s agents contacted the FAA, no such report had been

¹ 47 C.F.R. § 17.51(a).

² It was also observed that during daylight hours (6:00 PM on August 28, 2002), the paint was very faded and high intensity lighting was being used. High intensity lighting is not prescribed in paragraphs 1, 3, 11 and 21 of FCC Form 715/715A.

³ See 47 C.F.R. § 17.47(a).

⁴ See 47 C.F.R. § 17.48(a).

received.⁵

III. DISCUSSION

4. Section 17.51(a) of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified. The antenna structure owner is responsible for maintaining the structure's lighting.⁶ On August 28 and 29, 2002, Entergy failed to exhibit the top red obstruction lighting on its antenna structure number 1020649.

5. Based on the evidence before us, we find Entergy willfully⁷ and repeatedly⁸ violated Section 17.51(a) of the Rules by failing to exhibit the prescribed tower lighting on antenna structure number 1020649.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁹ the base forfeiture amount for failing to comply with prescribed lighting and/or marking is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹¹ and Sections 0.111, 0.311 and 1.80 of the Rules,¹² Entergy Services, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(a) of the Rules by failing to exhibit prescribed obstruction lighting on antenna structure 1020649 in Labadieville, Louisiana.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Entergy Services, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

⁵ Since no report had been received, the FCC agents submitted a report to the FAA so that a Notice to Airmen ("NOTAM") could be issued warning aircraft of this hazardous condition.

⁶ See 47 C.F.R. § 17.6(a).

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willfull', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁸ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁹ 47 C.F.R. § 1.80(b)(4).

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

¹³ See 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Entergy Services, Inc., P. O. Box 551, Little Rock, Arkansas 72203.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau

Attachment